IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24-8-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

WRIT PETITION No.49122 of 2006
and
M.P.No.1 of 2006

P.Jeyabalakrishnan .. Petitioner

Vs.

1. The Secretary to Government,
   Rural Development Department,
   Fort St. George,
   Chennai.

2. Thiru K.Ashok Vardan Shetty,
   Secretary to Government,
   Rural Development Department,
   Fort St. George,
   Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for records from the file of the first respondent made in Ref.No.G.O.(1D) No.725 dated 11.12.2006 and quash the same.

For Petitioner : Mr.Vijay Narayan, S.C.
For Mrs.Narmada Sampath

For Respondents : Mr.S.Veeraraghavan,
Addl.Advocate General.

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O R D E R

The petitioner has come forward with the present Writ Petition challenging the order of suspension passed against him by the first respondent dated 11.12.2006.

2. The short facts which is necessary for the disposal of the present Writ petition is as follows:-

(a) The petitioner has been working in Government

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Departments for the past 25 years with an outstanding performance and with the appreciation of senior officers. He joined as Group-I Officer in Tamil Nadu State cadre through TNPSC selection process in 1989 and he has been working in Rural Development Department initially as Divisional Development Officer, Personal Assistant to Collector, Assistant Director of Town Panchayats and on promotion as Joint Director in Rural Development Department since 1996.

(b) The further case of the petitioner is that the then Secretary to Government Smt.Santha Sheela Nair, I.A.S., Director Thiru M.Rajaram, I.A.S., the then District Collectors of Coimbatore District Thiru N.Muruganantham, I.A.S., Thiru S.Kosalaraman, I.A.S, Thiru Dr.K.C.Khandeswal, Advisor and Head, Bio-energy Group, Government of India, New Delhi and Thiru K.Chakar Borty, Director, Lok Sabha Secretariat, New Delhi have appreciated and commended his performance and have certified his sincerity and integrity.

(c) The further case of the petitioner is that there exists a dispute between himself and his wife and cases are pending against her for divorce on the ground of adultery and cruelty. The petitioner's father-in-law is a very close friend of the second respondent and he is now holding the post of Secretary. The second respondent is pressurizing the petitioner to join his wife. Further, the petitioner's father-in-law is openly threatening him that he will put him in jail using the power of his friend, namely, the second respondent. While so, the present order of suspension has been passed against him by the second respondent only with a mala fide intention.

3. Counter affidavit has been filed by the second respondent wherein it has been denied that out of malice an order of suspension has been passed. Further, it has been averred that the order of suspension was passed on the basis of material evidence of grave irregularities and there is no malice in it.

4. The petitioner has filed a reply affidavit denying the various contentions raised by the second respondent.

5. On the above pleadings, Mr.Vijay Narayan, the learned senior counsel appearing for the petitioner, contended that the second respondent has passed the impugned order with a mala fide intention to satisfy the petitioner's father-in-law, who has been his close friend for the past 20 years. Further, the learned senior counsel submitted that when the second respondent was serving as Sub Collector, Hosur in the year 1985, he helped the petitioner's father-in-law to obtain licence to run a theatre and the name of the second respondent is also finds in the stone laid at the time of opening the theatre. The

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learned senior counsel further submitted that the second respondent used to attend important family functions of his father-in-law. Using that friendship, the second respondent has persuaded the petitioner to join his wife and threatened that in case if he does not do so, he will take severe action against the petitioner. Thus, the sum and substance of the argument of the learned senior counsel appearing for the petitioner is that the impugned order of suspension has been passed only with mala fide intention, since the second respondent is being the friend of his father-in-law.

6. Per contra, Mr.S.Veeraraghavan, the learned Additional Advocate General, assisted by Mrs.Geetha Tamaraiselvan, Government Advocate, appearing for the respondents 1 and 2 contended that Thiru Y.S.Rammoorthy, the father-in-law of the petitioner is an acquaintance but not a friend of the second respondent. The impugned order has been passed by the second respondent, not out of malice, but because of the irregularities committed by the petitioner and hence, the order of suspension need not be set aside.

7. I have heard Mr.Vijay Narayan, the learned senior counsel appearing for the petitioner and Mr.S.Veeraraghavan, the learned Additional Advocate General appearing for the respondents.

8. Normally, an order of suspension could be interfered with only (a) if the authority who passed the order has no jurisdiction to do so; (b) if it is tainted with mala fide; or (c) if there is any violation of the statutory provision. Admittedly, in the case on hand, it is not the case of the petitioner that the respondents have no authority or jurisdiction to pass the order of suspension. Equally, it is not the case of the petitioner that the impugned order has been passed in violation of any statutory provisions. But, the definite case of the petitioner is that the impugned order has been passed with mala fide intention by the second respondent.

9. Now, let me see whether the petitioner has made out a prima facie case in establishing that there is an element of mala fide in passing the order of suspension against the petitioner. The petitioner in para 7 of his affidavit has stated as follows:-

> "My father-in-law is very close friend of the 2nd respondent and he is now holding the post of Secretary. the friendship is so strong to the extent that my wife, daughter of Y.S.Rammoorthy could influence and get support of the 2nd respondent for an unauthorised and unlawful purpose. Whereas the 2nd respondent, ever since from the date of his joining has been threatening

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both through letter of Director and over phone pressurizing me to join with my wife. He is misusing his official powers to please his close friend Thiru Y.S.Rammoorthjy of Hosur. When the 2nd respondent was serving in Hosur as Sub Collector in the year 1985, my father-in-law had problems to get a Licence to run his Cinema Theatre, ultimately it could be obtained only with the help of the respondent. Since then they are very close friends. He also attended family functions of my father-in-law. I submit that my wife and my father-in-law are giving indirect threat through their family friend saying that I will be suspended on false allegations. My father-in-law are giving indirect threat through their family friend saying that I will be suspended on false allegations. My father-in-law has been openly threatening me through my brother and my friends, that I would be suspended and put into jail using the powers of his friend the respondent herein. I have represented this matter to the Secretary and Director through a confidential letter sent on 30.7.2006 by speed post."

Again in para 9 of the affidavit, the petitioner has stated as follows:-

"I submit that the 2nd respondent has been threatening me saying that if I am not joining with my wife obeying his words, I would be suspended. The Doctors who examined with reference to MRI scan reports opined that I have to undergo surgery or had to take rest for a longer period so that acuteness of the problem will not arise again. I have already completed ICWA preliminary exam and I want to complete the final course. While taking treatment, I can complete the studies, which will be certainly useful for my service. Therefore, I have applied for leave from December 18 to 30.6.2007 for complete my ICWA Final course and to have permanent remedy to my back pain problem. Now on seeing my study leave application, the 2nd respondent, has resorted to the extent of issuing G.O. suspending me from service instead of sanctioning study leave."

Again in para 44 of the affidavit, the petitioner has stated as follows:-

"I submit that I was transferred from Coimbatore to Krishnagiri Training Centre by the

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order of respondent in June 2006. My wife and her brother went to the Krishnagiri Training Centre even before my joining the Institute and insisted on the officials to hand over the Quarter's Key. As the Training Institute official did not hand over the key on the reason that I had not yet joined on that date, and that the Quarters was not fit for occupation (as the Principal post was vacant for many years) my wife immediately rang up to the Secretary, the 2nd respondent in this case using the Institute phone and influenced on this matter. The 2nd respondent immediately threatened the staff in the Institute and ordered him to give the key of the Training Hall to sotre the Household articles failing which severe action will be taken against the official and subsequently the key has been handed over to her and articles were stored and articles are still in the Training Hall. This is very much an unlawful act. Because of this illegal occupation of Training Hall, proposals from Districts for giving training could not be accepted. The Training Hall has capacity to train a 50 Official batch at a time. For the past 6 months, the Training Hall could not be used for the purpose for which it was constructed by the Govt. This unlawful act shows that how much influence and proximity my wife and my father-in-law has got with the respondent."

10. Counter affidavit has been filed by the second respondent wherein regarding the averments made about the closeness of the second respondent with the father-in-law of the petitioner, it has been stated as follows:-

"I respectfully submit that Thiru Ramamoorthy, the father-in-law of the petitioner, is an acquaintance but not a friend of the second respondent. The second respondent knew him as a part-time reporter and a small time cinema theatre owner during 1985-87 when he was Sub Collector of Hosur, Dharmapuri District. An I.A.S. Officer gets to know a wide variety of people in the course of his duties. This does not mean that the I.A.S. Officer would get involved in the family/private matters of such persons."

11. When specific averments have been made in the affidavit of the petitioner that the second respondent is a very close friend of his father-in-law and that he only helped him in

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getting a licence to run his theatre, when the second respondent was serving as Sub Collector in Hosur and that the second respondent used to attend the family functions of his father-in-law, and that because of the said closeness, the second respondent has threatened the petitioner that he would put him in jail, in the counter affidavit, the second respondent has not stated that the petitioner's father-in-law, is a stranger to him, but he has stated that the petitioner's father-in-law Thiru Ramamoorthy is an acquaintance but not a friend of him. As rightly pointed out by the learned senior counsel appearing for the petitioner, if it is the case of the second respondent that as a Sub Collector, he would have an access to so many people, he may not immediately identify and accept in his counter affidavit that he knew Thiru Ramamoorthy, the petitioner's father-in-law, as a part-time reporter and not as a friend. It is strange, as rightly pointed out by the learned senior counsel for the petitioner, that the second respondent could recollect the facts relating to 1985-87, after a period of 21 years and it is absolutely impossible to remember a person whom he met some 21 years back, if the relationship of the said person is only an acquaintance and not a friend.

12. Yet another factor that has been brought forth by the petitioner is that in paragraph 44 of the affidavit, the petitioner has narrated an incident that happened in June 2006 which has been extracted earlier. The second respondent has not even denied the same in the counter affidavit filed by him in December 2006. It can then well be presumed that the incident averred by the petitioner in paragraph 44 of his affidavit is true. The second respondent has denied the said facts only in the additional counter affidavit filed to the reply affidavit of the petitioner in July 2007. In the reply affidavit in para 7, the petitioner has averred as follows:-

> "The petitioner further submits that Thiru N.Jaganathan in his letter dated 20.7.2006 has stated that the wife of the petitioner contacted the second respondent over phone and the second respondent has also given instructions to him over phone to hand over the Training Hall to her. It is evident that the wife of the petitioner had the cell number/telephone number of the second respondent readily available with her and also she had an easy access over phone to the second respondent. This clearly shows the intimacy and influence over the second respondent by the family of the petitioner's father-in-law."

13. In the additional counter affidavit to the said reply affidavit, the second respondent has averred as follows:-

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"With regard to the averment made in para 7 of the reply affidavit I respectfully submit that the allegation is denied. It is easy to find the office, residential and cell phone numbers of an IAS officer as they are all in the public domain. The petitioner's wife had brought her belongings to the Regional Institute of Rural Development, Krishnagiri and had kept them in one of the rooms temporarily as the Principal's quarters was in a bad shape. Nobody was told to hand over the "Training Hall" to her. Shortly, thereafter, she is reported to have removed her belongings from the Institute."

14. In the said counter affidavit, the second respondent has not denied that the wife of the petitioner contacted him over phone and he has given instruction over phone to hand over the Training Hall to her. This will clearly show that there is an element of truth in the statement made by the petitioner about the closeness of the second respondent with the father-in-law of the petitioner and the averments made in this regard. Further, the second respondent has not denied the statement made by the petitioner in his affidavit that the second respondent has attended the family functions of his father-in-law. If it is a mere acquaintance, the second respondent would not have attended the family functions of the father-in-law of the petitioner.

15. The learned Additional Advocate General appearing for the respondents cited a decision reported in 2002 (1) S.C.C. 188 (UNION OF INDIA v. ASHUTOSH KUMAR SRIVASTAVA) and submitted that there is always a presumption in favour of the administration that it exercises powers in good faith and for public benefit. The burden is on the individual to produce sufficient material to suggest of the mala fides of the authority concerned and it is not easy to discharge the same. It is relevant to refer para 7 of the said judgment which reads as follows:-

"In the first place, the Tribunal should have given a definite finding as to whether Shri Sanjai Mittal was related to Respondent 2 or not and, if that ground failed, it should not have allowed respondent 1 to change his stance that somehow and in some other manner Shri Sanjai Mittal is connected with respondent 2. The Tribunal should not have proceeded on line proving the moral indicated in one of Aesop's Fables of the lamb and the wolf when the complaint was that the stream was being polluted by the lamb and if not by it, by any of its forefathers. The approach of the Tribunal in

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this regard is by no reason good enough to chastise the said respondent 2 and condemn the proceedings conducted not only by him but other officers who are of equivalent rank. There is always a presumption in favour of administration that it exercises powers in good faith and for public benefit. The burden is on the individual to produce sufficient material to suggest of the mala fides of the authority concerned and it is not easy to discharge the same."

The facts narrated in the said judgment will not be applicable to the facts of the present case.

16. The learned Additional Advocate General has cited yet another decision reported in 1995 Supp. (4) S.C.C. 89 (DR.J.N. BANAVALIKAR v. MUNICIPAL CORPORATION OF DELHI) and submitted that a vague allegation of mala fide without necessary particulars cannot be accepted. As pointed out earlier, the petitioner has not only raised the plea of mala fide, but has given instances for the same. This cannot be said to be vague or without any necessary particulars. Hence, the said judgment will not be applicable to the facts of the present case. The discussion made above clearly shows that the petitioner has established mala fide of the second respondent in passing the impugned order.

17. Thus, the above narration of facts and discussion amply prove that the order of suspension has been passed by the second respondent is tainted with mala fide. As pointed out earlier, an order of suspension could be interfered if it is established that it has been passed with mala fide intention. Since I have come to the conclusion that the impugned order of suspension dated 11.12.2006 has been passed with a mala fide intention, I am constrained to set aside the order of the first respondent made in Ref.No.G.O.(1D) No.725 dated 11.12.2006.

18. In fine, the Writ Petition stands allowed. Consequently, M.P.No.1 of 2006 is closed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government,
   Rural Development Department,
   Fort St. George,
   Chennai.

2. Thiru K.Ashok Vardan Shetty,
   Secretary to Government,
   Rural Development Department,
   Fort St. George,
   Chennai.

MDR (CO)
km/18.9.

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